

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JORGE L. CONCEPCION,
Plaintiff,

v.

KYLE A. RUSSELL, *et al.*,
Defendants.

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CIVL ACTION NO. 21-CV-0274

ORDER

AND NOW, this 4th day of March, 2021, upon consideration of Plaintiff Jorge L. Concepcion's Motion to Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 3), and *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Jorge L. Concepcion, #204734, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Lehigh County Jail or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Concepcion's inmate account; or (b) the average monthly balance in Concepcion's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Concepcion's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Concepcion's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is directed to **SEND** a copy of this Order to the Warden of Lehigh County Jail.

4. The Complaint is **DEEMED** filed.

5. For the reasons stated in the Court's Memorandum, the following claims are **DISMISSED** failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii):

a. All constitutional claims based on the grievance process are **DISMISSED**

WITH PREJUDICE;

b. Claims against Defendants Warden Kyle A. Russell, Deputy Warden

MacFadden, Amanda Benner, and Officer Reeves are **DISMISSED**

WITHOUT PREJUDICE to amendment in accordance with paragraph seven (7) of this Order;

c. The Clerk of Court **SHALL NOT TERMINATE** any Defendants from the docket at this time.

6. The Clerk of Court is directed to **SEND** Concepcion a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.¹

7. Concepcion is given thirty (30) days to file an amended complaint in the event he seeks to amend his claims against Defendants Warden Kyle A. Russell, Deputy Warden MacFadden, Amanda Benner, and Officer Reeves. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Concepcion's claims against each defendant, and

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.

shall bear the title “Amended Complaint” and the case number 21-274. If Concepcion files an amended complaint, his amended complaint must be a complete document that includes all of the bases for Concepcion’s claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. **Claims that are not included in the amended complaint will not be considered part of this case because the amended complaint becomes the pleading upon which the case will proceed.** This means that, if Concepcion wants to file an amended complaint and to proceed on claims that have not yet been dismissed, he must reassert in his amended complaint the claims that have not been dismissed. When drafting his amended complaint, Concepcion should be mindful of the Court’s reasons for dismissing his claims as explained in the Court’s Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

8. If Concepcion does not file an amended complaint the Court will direct service of his initial Complaint on Defendants Officer Bowlby, Jane Doe Officer G, and John Doe Midnight Officer only. Concepcion may also notify the Court that he seeks to proceed on these claims rather than file an amended complaint. If he files such a notice, Concepcion is reminded to include the case number for this case, 21-274.

9. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

s/ Michael M. Baylson

MICHAEL M. BAYLSON, J.